United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF

ORIGINAL

76-1011

SUBMITTED ON
ORIGINAL RECORD

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

----------X

UNITED STATES OF AMERICA, :

Plaintiff-Appellee, :

-against- :

JOHN GWYNN, :

Defendant-Appellant. :

----------X

B/P/s

BRIEF and appendix FOR DEFENDANT-APPELLANT

UNITED STATES COURT OF APPEALS
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TABLE OF CONTENTS

TABLE OF AUTHORITIES

TABLE OF CASES

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TABLE OF RULES:

TABLE OF STATUES:

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UNITED STATES OF AMERICA, :

Plaintiff-Appellee, : Submitted On Original Record

-against- :

Docket No. 76-1011

JOHN GWYNN, :

Defendant-Appellant. :

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BRIEF FOR DEFENDANT--APPELLANT

STATEMENT OF THE CASE

This is an appeal by the defendant, JOHN GWYNN, from a conviction after trial before the Honorable Irving Ben Cooper and a jury in the Southern District of New York on narcotics charges. He was found guilty on three of the five counts which had been levelled against him in the indictment, to wit: a charge of conspiracy to violate 21 U.S.C. sections 812, 841 (a) (1) and 841 (b) (1) (A) (court 1) and two substantive counts. The first substantive count (count 10) charged him with possessing with intent to distribute approximately a quarter of a kilogram of heroin in or about March, 1973, in violation of 21 U.S.C. sections 812, 841 (a) (1) and 841 (b) (1) (A). The second substantive count (count 16)

charged him with distributing and possessing with intent to distribute 148.5 grams of heroin in violation of the same statutes and 18 U.S.C. Sec. 2.

The jury disagreed as to count 14, which charged GWYNN with distributing and possessing with intent to distribute 159.5 grams of cocaine on or about October 30, 1973 and as to count 15, which charged GWYNN with the same violations involving 151.5 grams of cocaine on December 30, 1973.

GWYNN was sentenced to 8 years on each count to be followed by three years' special parole to run concurrently, and is presently serving his sentence at Lewisburg.

GWYNN appealed along with his co-defendants but his appeal was dismissed, presumably for failure to prosecute, on April 18, 1976. His appeal was subsequently reinstated on May 18, 1976.

In the meanwhile, his co-defendants prosecuted their appeals which were argued on May 5, 1976 before Circuit Judges Mulligan and Hays and District Judge Palmieri and upon information and belief have been affirmed

This brief is submitted on behalf of the defendant-appellant JOHN GWYNN, and is to be submitted on the original record.

QUESTIONS PRESENTED

1. As a matter of law, did the Government fail to establish prima facie that the defendant GWYNN was a member of the conspiracy charged in the first count of the indictment?

2. Was the breach of sequester by a juror on three (3) separate occasions and the potential for prejudice caused thereby, during the conduct of defendant's criminal trial, with the knowledge of the Court officer in charge, as a matter of law violative of defendant's right to an impartial jury?

3. Was the break in the defendant's summation to the jury caused by the trial court's interruption and adjournment of the trial, so unduly prejudicial to the defendant's presentation of his defense as to violate his Sixth Amendment rights.

4. Did the Government fail under its obligation as set forth in Brady v. Maryland, to provide the defendant GWYNN with evidence and potential witnesses possessed by or known to the prosecution as being material to the establishment of the defendant's innocence?

STATEMENT OF FACTS

The defendant John Gwynn was indicted on July 10, 1975, by a Federal Grand Jury convened in the Southern District of New York, charging him and nineteen (19) other defendants with having unlawfully, willfully and knowingly combined, conspired, confederated and agreed together with each other to violate Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code, from on or about the 1st day of January 1973 and continuously thereafter, up to and including the date of the filing of the indictment.

The indictment charges that it was part of the conspiracy charged that the alleged conspirators unlawfully, willfully and knowingly would distribute and possess with intent to distribute Schedule I and II Narcotic Drug Control Substances in violation of Section 812 841(a)(1) and 841(b)(1)(A) of Title 21 of the United States Code.

Count I of said indictment, set forth 21 alleged "overt acts" allegedly comitted in furtherance of the foredescribed conspiracy. Paragraph number 5, under the heading of "OVERT ACTS", recites:

> 5. In or about March, 1973 defendant Ernest Malizia and co-conspirator, Mario Perna delivered a package containing approximately one-quarter kilogram of heroin to defendant John Gwynn.

Paragraph 22, set forth under that same heading of "OVERT ACTS", recites:

> 22. On or about January 15, 1974, defendant John Gwynn distributed approximately 148.5 grams of heroin

in or near apartment 5C, 1065 Jerome Avenue, Bronx, New York.

SUBSTANTIVE COUNTS IN THE INDICTMENT AGAINST DEFENDANT GWYNN:

Besides the count of conspiracy, the indictment against the defendant Gwynn sets forth four (4) additional substantive counts.

Count "TENTH" sets forth:

> The Grand Jury further charges:
> In or about March, 1973 in the Southern District of New York, Jonney Gwynn the defendant, unlawfully, willfully and knowingly did possess with intent to distribute as Schedule I Narcotic Drug Controlled Substance, to wit, approximately one-quarter kilogram of heroin.
> (Title 21, United States Code, ¶ 812, 841(a)(1) and 841(b)(1)(A).

Count "FOURTEENTH" of the indictment sets forth:

> The Grand Jury further charges:
> On or about October 30, 1973, in the Southern District of New York, the defendant John Gwynn, unlawfully, willing and knowingly did distribute and possess with intent to distribute a Schedule II Narcotic Drug Controlled Substance, to wit, 159.5 grams of cocaine.
> (Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(a)(A); Title 18, United States Code, Section 2)

Count "FIFTEENTH" recites:

> The Grand Jury further charges:
> On or about the 20th day of December, 1973 in the Southern District of New York, John Gwynn, the defendant, unlawfully, willfully and knowingly did distribute and possess with intent to distribute a Schedule II Narcotic Controlled Substance, to wit, 151.5 grams of cocaine.
> (Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A); Title 18, United States Code, Section 2.)

Count "SIXTEENTH" of the indictment recites:

> The Grand Jury further charges:
> On or about the 15th day of January, 1974 in the Southern District of New York, John Gwynn the defendant, unlawfully, willfully did distribute and possess with intent to distribute a Schedule I Narcotic Drug Controlled Substance, to wit, 148.5 grams of heroin.
> (Title 21, United States Code, Section 812, 841(a)(1) and 841(b)(1)(A); Title 18, United States Code, Section II)

After a trial lasting five (5) weeks and after hearing over 4,000 pages of transcribed testimony the defendant Gwynn was found guilty on three of the five counts which had been levied against him in the indictment, to wit: the charge of conspiracy to violate 21 U.S.C. Sections 812, 841(a)(1) and 841(b)(1)(A) [Count One] and two substantive counts. The first substantive count [Count Tenth] was the one charging him with possession of intent to distribute approximately a quarter of a kilogram of heroin on or about March, 1973. The second substantive count [Count Sixteenth] was the one charging him with distributing and possessing with intent to distribute 148.5 grams of heroin.

The jury disagreed as to Counts Fourteenth and Fifteenth which alleged distribution and possession with intent to distribute 159.5 grams of cocaine on or about October 30, 1973 and the same violations involving 151.5 grams of cocaine on December 30, 1973, respectively.

On December 3, 1975 the Honorable Irving Ben Cooper, District Judge sentenced the defendant Gwynn to eight (8) years on each count to be followed by three years special probation, to run concurrently.

TESTIMONY AFFECTING DEFENDANT GWYNN:

Mario Perna was the first witness called on behalf of the government and testified that he (Perna) in late February, 1973 was contacted by a man named Ernest Malizia, and another, for the purpose of getting "back into the narcotic business and make some money." (Tr. 453-454). Thereafter, the following testimony of Perna constructed a complex web of procurement and distribution of narcotics an a wide scale.

Perna testified that he and Malizia visited the defendant Gwynn, allegedly seeking to sell narcotics to Gwynn. (Tr. 503-504). Perna then testified that he allegedly made a sale of a "half kilo" to Gwynn. (Tr. 506-507).

Perna also testified that he and Malizia sold narcotics to defendant Gwynn on a regular basis. (Tr. 539, 553, 572).

The testimony of Perna given over the next several days, unravelled an organization which the United States Attorney in his opening statement called "the root of the heroin trade" (Tr. 381). Despite the international scope of the organization Perna described, it is emphasised that, as the United States Attorney recognized in his opening statement, defendant Gwynn was only allegedly a "customer" and not a co-conspirator. (Tr. 394)

Perna testified regarding certain records presented as government exhibits, which contained defendant Gywnn's telephone

number (Tr. 864), as well as a purported statement of account (Tr. 853).

The next time the defendant's name appeared in testimony was on October 2, 1975,during the cross examination of Perna by Mr. Lang, Gwynn's attorney (Tr. 1333-1348).

In the course of cross examination, Perna testified:

> Q. You went to his (Gwynn's) apartment with Malizia in 1973, right?
>
> A. Yes, sir.
>
> Q. And it was then that you asked John Gwynn to participate in your business, is that right?
>
> A. Yes, sir.
>
> Q. And, Mr. Perna, isn't it a fact that at that time at that meeting in his apartment John Gwynn refused to participate in your business?
>
> A. No, sir.
>
> Q. Isn't is a fact, Mr. Perna, that you saw John Gwynn on occasions after that meeting in his apartment and again asked John Gwynn to participate in your business?
>
> A. No, sir. He was a customer--
>
> (Tr. 13388, lines 11-24)

It was not until the afternoon of October 6, 1975, and after the testimony of several government witness had been received, that testimony regarding the defendant Gwynn was elicited. DEA undercover agent Salvemini, testified that in the early part of January of 1973 a

government informant named Fragliosi met casually with defendant Gwynn. Thereafter, agent Salvemini testified that he was introduced to defendant Gwynn by informant Fragliosi.

Thereafter, agent Salvemini testified that he allegedly spoke to defendant Gwynn about purchasing one kilogram of heroin for forty thousand dollars (Tr. 1629). However, there was no testimony as to any actual sale, and agent Salvemini testified that he did not see defendant Gwynn after the aforedescribed meeting (Tr. 1630).

The next government witness, one John Vasquez, testified that in July of 1973, he, Vasquez, met with defendant Gwynn (Tr. 1633-1634) and that he observed an individual named Farrell transfer to defendant Gwynn, some money (Tr. 1637). There was no testimony as to the transfer of sale of drugs; however, the testimony of Vasquez did indicate that both he and Gwynn indulged in inhaling cocaine shortly thereafter. (Tr. 1637-1638).

At that point defendant Gwynn's trial attorney moved to strike Vasquez's testimony as having nothing to do with the indictment. This motion was denied by the Court (Tr. 1639).

Thereafter, Vasquez testified that he received two (2) ounces of cocaine from defendant Gwynn. (Tr. 1642-1644).

Thereafter, Vasquez testified that he contacted the defendant Gwynn seeking to arrange a sale of one-eighth kilogram of cocaine to a third person named Finn. (Tr. 1646-1647) However, Vasquez concedes that defendant Gwynn did not appear at the designated meeting place

(Tr. 1651) and that Vasquez brought Finn to Gwynn's apartment and the sale was transacted. (Tr. 1654-1658).

Thereafter Vasquez testified as to a second sale of four (4) ounces of cocaine to him by defendant Gwynn in defendant Gwynn's apartment (Tr. 1670). Vasquez also testified that around the middle of January, 1974 Vasquez again met Finn who introduced an undercover agent by the name of William Simpson to Vasquez as "Bill" (Tr. 1666-1667). Agent Simpson attempted to purchase an eighth kilogram from Vasquez (T.R. 1678), and Vasquez thereupon allegedly sought to procure same from the defendant Gwynn (T.R. 1679). Vasquez then testified he purchased an eighth kilogram of heroin from Gwynn and turned it over to Finn, who then gave it to agent Simpson (Tr. 1686-1689). The entire jist of Vasquez's testimony was that he allegedly purchased narcotics from defendant Gwynn, not as a conduit, but as a independent contractor". This was apparently the view taken by the jury since it dismissed Counts "Fourteenth" and "Fifteen", regarding the sale of cocaine against defendant Gwynn.

In the course of the trial, the government presented as its witness William Simpson, a drug enforcement administration agent. Agent Simpson testified that he purchased a one-eighth kilogram of heroin from Vasquez in the vicinity of defendant Gwynn's apartment (Tr. 1763-1768). Again, there is no testimony that there was any direct contact between defendant Gwynn and agent Simpson.

The next government witness testifying against defendant

Gwynn, was Kieran Kobell, special agent with the Department of Justice. Mr. Kobell testified that while he was maintaining surveillence of Gwynn's apartment house, he observed Vasquez enter the defendant Gwynn's apartment on the evening of January 15, 1974, and remained therein for approximately fifteen minutes. (Tr. 1831-1836).

The next government witness called was Anthony Verzino, who by his own testimony admittedly became a partner of Perna and Malizia in late August or September of 1973 (Tr. 1871-1872). Verzino also testified (Tr. 1887-1890) that defendant Gwynn discussed purchasing cocaine from Malizia and gave fifteen thousand ($15,000.00) dollars to Malizia. However, there was no testimony that Gwynn received narcotics, nor anything else in exchange. The government, however, introduced into evidence certain books and records reflective that "Quinn" who Verzino testified was John Gwynn was indebted to him in the amount of $4,000.00. (Tr. 2061).

Defendant Gwynn's name did not again appear in the testimony until several days later, and then only when his attorney announced that he had no cross examination for Verzino. Thereafter, a huge void in the testimony exists with respect to any reference to Gwynn, until October 15, 1975 when a stipulation was entered into between the government, and Mr. Gwynn's trial lawyer that defendant Gywnn during 1973 and 1974 was residing at 1065 Jerome Avenue, apartment 5-C, Bronx, New York (Tr. 2894, 2898).

DISMISSAL OF A JUROR FOR LEAVING THE JURY ROOM:

About four o'clock in the afternoon of October 15, 1975, Judge Cooper was notified by one of the attorneys for one of the defendants, that one of the jurors had been seen in the public hallway speaking to a government agent. (Tr. 2937) Judge Cooper investigated and the record reflects the following:

> THE COURT: It is 20 minutes after four. About a half hour ago, while counsel were in the robing room taking up some of the issues that you had the resolve of Mr. Hoffman came in and said, in essence, that his client and another defendant reported to him that one of the jurors in the telephone booth on this floor seen addressed-- he was addressed by a special agent. What was said, who the juror is, was not known, but the charge is that a special agent spoke to one of the jurors. I then called in Mr. Amorosa and Mr. Hoffman and said "Try to run this down, but do it quietly and effectively."
>
> Mr. Amorosa said, "I will bring all the special agents into the courtroom, let them look at the exhibits, or help me with the exhibits, and while they are doing that the defendants who brought up the charge can look them all over and decide which one it is claimed was talking to one of the jurors."
>
> They left me to go about the completion of that particular enterprise. I then called in the Clerk of this Part, and I said to him, in essence, "Have you been having trouble with the jurors?"
>
> "None," said he, in essence, "except one. He is a young man...(Tr. 2937).

Thereafter the Judge caused the following testimony to be placed upon the record regarding the incident:

THE COURT: Will you tell Mr. Bowen to come in.

MR. CHANCE: I noticed when we left here three or four defendants were rushing in the door saying the juror is talking to the agent.

THE COURT: Mr. Bowen, I called you in about ten or fifteen minutes ago, and I said to you, in effect, did I not, have the jurors caused you any trouble, and do you remember I did that?

THE CLERK: Yes.

THE COURT: What was your answer to me?

THE CLERK: I told you there was one fellow on the jury, I had warned him about walking through the hall when the attorneys are out there and the spectators and I told him you would put him off the jury if he would keep doing it, and he paid me no mind.

THE COURT: How did he behave when you said it What do you mean he paid you no mind?

THE CLERK: I mean he --

THE COURT: Stayed out?

THE CLERK: He didn't say anything to me, and he stayed out.

THE COURT: How many times did you tell him to go into the jury room, that same person?

THE CLERK: I have been telling him during the whole trial.

THE COURT: So it's been day-after-day you have had that problem with that same person, is that what you mean?

THE CLERK: Yes.

THE COURT: Which one is he?

THE CLERK: The young fellow with the gray suit.

THE COURT: Did't you check it yet?

THE CLERK: No.

THE COURT: Didn't you ask to check it?

Off the record.
(Discussion off the record.)
(Tr. 2942-29437)

[The Court then questioned the juror involved to determine if the violation of sequester was true]

THE COURT: It has come to our attention, sir that despite the warning to you by the Clerk of this Court, you continue to use the telephone, the public telephone on this floor, and stay out of the juryroom for substantial periods of time in the course of this trial. Is that so?

MR. WULKAN: Yes, sir.

* * * *

THE COURT: On how many occasions did Mr. Bowen, the Clerk, tell you to go stay in the juryroom and not be out in the hall? How many times did he say that to you?

MR WULKAN: Three times.

THE COURT: On three separate days?

MR. WULKAN: I don't remember.
(Tr. 2944-2946)

As a result of this violation the juror was dismissed from the panel and the trial continued.

COMMENCEMENT OF THE DEFENSE:

On October 16, 1975, although the government had not completed its case it was agreed between counsel and the Court that the defense would go forward reserving all motions as to whether or not the government put in a prima facia case after all the testimony is in. (Tr. 2980).

Thereafter, a series of defense witnesses was called to testify, but it was not until the morning of October 21, 1975 that testimony concerning defendant Gwynn again came before the jury. This time, the testimony was from the defendant himself. Gwynn testified that he knew Perna and Vasquez from Greenhaven State Prison where he had served time on a manslaughter conviction (Tr. 3540, 3542).

Gwynn testified that Perna came to see him in 1972 with another gentleman named "Ernie", whom he knew through prison but only by his first name. (Tr. 3551). Gwynn further testified that Perna and "Ernie" asked him if he wanted to deal in narcotics to which Gwynn refused, stating "I have done enough time already, that I was happy, me and my wife were very close at that time and my kids were getting together now and that I didn't need any problem and besides that I was being supervised very closely by parole officers and I didn't want to have no problems as far as narcotics was concerned" (Tr. 3551-3552).

Gwynn thereafter further testified that in late 1973 or in early 1974 he was again approached with a similar proposition by Perna

and Verzino. (Tr. 3553). It appears, that Perna and Verzino contacted Gwynn because they needed help to get rid of a stash of narcotics which they had. When Gwynn refused (Tr. 3554), Perna became violent and threatened Gwynn (Tr. 3554).

Gwynn also testified that Vasquez approached him about a cocaine deal which Gwynn also refused. (Tr. 3558).

Gwynn also testified that he had never met special agent Salvemini and that Perna's testimony against he, Gwynn, was in fact a lie. (Tr. 3558-3559, 3578).

BOTH THE GOVERNMENT AND DEFENDANTS RESTED AFTER GWYNN TESTIFIED:

After Mr. Gwynn's testimony, both the government and the various defendants rested, and Mr. Gwynn's attorney thereupon moved for a judgment of acquital pursuant to Rule 29. This motion was denied, and summations were begun. At approximately 2 P.M. on October 21, 1975 the government began a lengthy summation lasting approximately three (3) hours. (Tr. 3685-3774).

Thereafter, after a series of defense summations, defendant Gwynn's attorney was called upon by the Court to begin his summation at 10:45 P.M. (Tr. 3885). Defendant's attorney began his summation, only to be interrupted by the Court adjourning the summation until the following morning. The Court, in interrupting defendant's attorney, stated:

> THE COURT: Mr. Lange, it is a little unfair to you but I want to ask you to stop now and we will continue tommorrow morning. You will get your full chance to finish whatever it is you want to say.
> (Tr. 3892).

This interruption of the defense summation completely deflated any momentum or rapport which defense counsel may have attained in his summation to the jury. As may be seen in the record of the following morning, defense counsel's continued summation did not even achieve a fraction of the crescendo created the prior evening up to the point where he was interrupted by the Court.

CHARGES OF THE COURT:

After the various summations, Judge Cooper commenced a lengthy charge to the jury, which as far as defendant Gwynn is concerned was substantially free from judicial error.

SENTENCING:

After a verdict of guilty was returned against the defendant Gwynn on Counts One, Ten and Sixteen, the defendant appeared before the Honorable Irving Ben Cooper on February 2, 1976 for sentencing. At that time, defendant Gwynn stated for the record:

> I do want to say, though, your Honor, that there was an agent over here by the name of Mr. Salamini who claims that he negotiated with me a kilo of heroin. That testimony is false, your Honor. I was introduced to Mr. Salamini, I understand by an informant according to the record, and that this informant after finding out that he could not get anything on me, he must have related Mr. Salamini that information, and

> when he was told to lie I imagine that the informant must have been eliminated, because he didn't appear in this court and that was valid testimony that should have been here and it was evidence that should have been here.
>
> It would exonerate me from that particular-- from this particular case, your Honor.
>
> There was another agent that took the stand who said he had left the DEA and had moved to Mississippi, if you recall, your Honor. He had a beautiful accent from Mississippi, and he works in a trucking firm or something like that, or construction firm now. This gentleman also said that he wired up another informant and that he was around me with Mr. Vasquez, you know and what happened to this informant your Honor?
>
> This informant also was eliminated, and he could have exonerated me from this case by whatever wire he got to him, whatever he picked upon on the wiring. (Emphasis supplied).
>
> (Sentencing Minutes 44-45).

Accordingly, it is contended that the government witheld certain Brady material which was prejudicial to the defense of the defendant Gwynn.

POINT I

AS A MATTER OF LAW, THE GOVERNMENT FAILED TO ESTABLISH THAT THE DEFENDANT GWYNN WAS A MEMEBER OF THE CONSPIRACY CHARGED IN THE FIRST COUNT OF THE INDICTMENT AND THEREFORE THE CONVICTION AGAINST THE DEFENDANT ON THAT COUNT SHOULD BE DISMISSED.

The essence of the crime of conspiracy as contained in 18 U.S.C.A. §371 is an agreement between two (2) or more persons to commit an offense against the United States supplemented with an overt action by one or more of the conspirators to effectuate the agreement. See Braverman v. United States, 317 U.S. 49 (1942); United States v. Falcone, 311 U.S. 205 (1940). It is also well settled that "traditionally the law has considered conspiracy and the completed substantive offense to be separate crimes" Iannelli v. United States, 420 U.S. 770, 777 (1975). In accordance therewith, courts have held that mere knowledge, approval or acquiescence in the object of the conspiracy, without an agreement to cooperate in achieving such object and purpose, does not make one a party to a conspiracy as a co-conspirator. See, e.g., Jones v. United States, 365 F.2d 87 (10th Cir. 1966).

At bar, appellant was convicted of conspiring to violate certain sections of Title 21 of the Unites States Code, namely § 812, 841(a)(1) and 841(b)(1)(A). However, the evidence adduced at trial failed to establish that the appellant was a member of the conspiracy charged in the first count of the indictment.

While the evidence sought to demonstrate that appellant unlawfully possessed certain narcotics, arguendo, the mere fact that he purchased such narcotics from members of the conspiracy was insufficient to establish participation in the conspiracy charged. Guilt may not be inferred from mere association.

Mere knowledge, approval or acquiescence in the object or purpose of a conspiracy does not make one a conspirator United States v. Edwards, 488 F.2d 1154, 1158 (5th Cir. 1974) citing United States v. Thomas, 468 F.2d 422, 425 (10th Cir. 1972); Causey v. United States, 352 F.2d 203, 207 (5th Cir. 1965).

At bar, the record indicates at best that, appellant was merely a independent distributor of narcotics, and was not directly involved in the conspiracy charged in the first count of the indictment. The evidence presented at trial against appellant was directed at establishing illegal possession of narcotic drugs. There is no evidence in the record what so ever to establish that the appellant participated in or conspired to create a chain of distribution. The commission of a crime in and of itself is insufficient to sustain a conviction for conspiracy.

In United States v. Koch, 113 F.2d 982 (2nd Cir. 1940), Koch was convicted in the lower court on an indictment charging him with conspiracy to violate certain provisions of the statutes relating to narcotic drugs. The only evidence which connected the appellant with the conspiracy was that approximately two (2) months after the drugs were illegally imported into the United States he contacted one of the conspirators and agreed to purchase some. The Second Circuit, in reversing the conviction on the conspiracy, held:

> The purchase of the cocaine ... was not enough to prove a conspiracy in which ... the appellant participated. They had no agreement to advance any joint interest. The appellant bought at a stated price and was under no obligation ... except to pay... that price. The purchase alone was insufficient to prove the appellant a conspirator....
>
> 113 F.2d at 983.

The Koch rationale was reiterated in United States v. Quintana, 508 F.2d 867 (7th Cir. 1975), wherein the Seventh Circuit held that "the single act of ... possession of heroin is insufficient evidence on which to base a conviction for conspiracy to import and distribute that drug." 508 F.2d at 881.

At bar, appellant finds himself in the same posture as Koch, namely, an independent purchaser of narcotics having no connection with the conspiracy. No evidence was ever presented at trial which proved that appellant was nothing more than a mere "customer" of the conspirators and recipient of their contraband. This the United States Attorney himself conceded in his opening statement. (Tr. 394).

A conviction on the substantive counts of the indictment does not automatically establish that this was an overt act in furtherance of a conspiracy. As was stated in United States v. Boyer, 84 F.Supp. 905, 907 (E.D. Pa. 1949):

> Just because [the defendant] may be found guilty of a substantive offense, it does not follow that a jury is justified in finding him guilty of a conspiracy to commit it. (Citations omitted.)

The Boyer case holds that although the United States may prosecute a subsequent confederate who enters a conspiracy already in the process of execution, in order for such prosecution to be successful the prosecution must establish that the new confederate was a knowing participant in the overall plan. Mere knowledge that one is violating the law is in and of itself insufficient to prove participation in the conspiracy or even knowledge of its existence. If the law were otherwise every person who committed a crime in tandem would also be prima facie guilty of a conspiracy.

At bar, it was never demonstrated that Gwynn ever possessed the requisite knowledge as to the conspiracy charged much less acquiescence or willingness to participate in that conspiracy. The prosecution failed, as a matter of law, to establish more than evidence of individual sales to Gwynn. Conspicuously lacking is the link which much necessarily connect Gwynn to the other defendants in a plan to distribute narcotics. Here that link is absent. The other defendants could have cared less what Gwynn did with the narcotics after he, Gwynn, purchased them, much the way any seller of goods loses interest in the goods after the sale is made. The fact that this was a sale of contraband does not in any way produce a different result.

Since the evidence produced at trial against Gwynn on the conspiracy count of the indictment did not establish any control by the other defendants of what Gwynn was to do with the narcotics after they were purchased, as a matter of law the United States failed to establish prima facie Gwynn's participation in the alleged conspiracy and therefore the conviction on that court must be reversed.

POINT II

THE BREACH OF SEQUESTER BY A JUROR ON THREE (3) SEPARATE OCCASIONS AND THE POTENTIAL FOR PREJUDICE CAUSED THEREBY, DURING THE CONDUCT OF A CRIMINAL TRIAL, WITH THE KNOWLEDGE OF THE COURT OFFICER IN CHARGE, AS A MATTER OF LAW VIOLATES THE DEFENDANT'S RIGHT TO AN IMPARTIAL JURY.

The trial record indicates that one of the jurors, a Mr. Wulkan, had violated the court order of sequestration by leaving the jury room on three (3) separate occasions and conversed with a special agent as well as utilized the public telephone. These violations were brought to the attention of the Clerk of the Court, who warned the juror, but who did not take any affirmative action to prevent repeated occurences. This juror was ultimately dismissed from the panel after Judge Cooper was informed of these repeated and flagrant violations of the order of sequestration. However, at that point defendant's right to an impartial jury was irretrievably prejudiced. Substantively as well as conceptually such breach of sequestration cannot be sanctioned, especially where, as here, it was done with full knowledge of the court officer in charge.

> [C]ommunications, relative to a case on trial between jurors and third persons, or witnesses, or the officer in charge of the jury, are absolute forbidden, and, if it appears that such communications have taken place, a presumption arises that they were prejudicial....
>
> Wheaton v. United States, 133 F.2d 522, 527 (8th Cir. 1943).

The logic behind this rule is indisputable and unyielding. A jury must pass upon cases free from external factors which might tend to disturb the exercise of their deliberate and unbias judgment.

Any communications between jurors and third persons or officers in charge of the jury, are absolutely forbidden, and if it appears that such communications have taken place, there arises a presumption that such communications were prejudicial. See United States v. Sorcey, 151 F.2d 899 (7th Cir. 1945); United States v. Rakes, 74 F.Supp. 645 (E.D. Va. 1947).

At bar, no investigation took place, the court merely asked the juror to whom he spoke. The court then felt that the juror should be dismissed and dismissed him. There is now no way to know exactly what was said or discussed or whom the juror telephoned or what was conveyed to the other jurors as a result of such illegal communications. All this is further worsened by the fact that the Clerk of the Court had knowledge of the various violations by the juror, but did not bring same to the court's attention until after the third such occurrence. The eventual dismissal of the juror did not remove the prejudice caused by such violations of the order of sequestration, and such potential prejudice as a matter of law violated the defendant's right to an impartial jury, thereby mandating a reversal of the conviction and a new trial.

In Remmer v. United States, 347 U.S. 227, 229 (1954), the United States Supreme Court stated its concern for an individual's right to an impartial jury thusly:

> In a criminal case, any private communication, contact, or tampering, directly or indirectly, with a juror during a trial about the matter pending before the jury is, for obvious reasons, deemed presumptively prejudicial....

The Remmer Court also ruled that a heavy burden rests upon the Government to establish that such contact with the jury was harmless

to the defendant. (347 U.S. at 229.) As the trial record indicates, no such evidence was presented by the prosecution which vitiated the taint to the jury occasior ' by one juror's unauthorized communication to a special agent and his telephone communications. Pursuasive on the issue in People v. Migliori, 269 App.Div. 996, 58 N.Y.S.2d 361 (2d Dept. 1945) wherein the Appellate Division of the Supreme Court of the State of New York reversed a judgment of conviction on the law and ordered a new trial when it was discovered that one of the jurors made unauthorized use of telephone facilities.

At bar, no one knows what prejudice was spread among the other jurors in the jury room upon the return of the juror who violated the order of sequestration. Speculation as to what may have occurred in the jury room after the return of the juror who made the telephone calls, or what information was transmitted is limited only by one's imagination. Under such circumstances, it was improper for the trial judge not to have investigated the matter more fully, and to have ordered a new jury. Since the trial record is devoid of any information relating to the content of the telephone communications, and since no substantial evidence was produced by the prosecution showing such prejudice to be harmless to the defendant, and for deep policy reasons presented by the breakdown in court security and supervision of sequestered juries, this Court should not sanction such conduct. In United States v. Betner, 489 F.2d 116, 119 (5th Cir. 1974) Judge Rives of the Fifth Circuit wrote:

> In the present case as in Remmer, supra, 347 U.S. at 229, "We do not know from this record ... what actually transpired, or whether the

> incidents that may have occurred were harmful or harmless" In such a case we think the rule should be the same ....

The rule alluded to above is that when an appellate court cannot, with certainty, rule from the record that potential prejudice caused by such unauthorized communication cannot be ruled harmless error, the judgment of conviction should be reversed and the case remanded for a new trial.

At bar, it is submitted that the presumption of prejudice against the defendant in the instant case, unrebutted by any substantial evidence to the contrary in the record, violated the defendant's right to an impartial jury and a fair trial, thereby mandating a reversal of the judgment of conviction and a remand for a new trial.

POINT III

THE BREAK IN THE SUMMATION TO THE JURY BY THE ATTORNEY FOR THE DEFENDANT, GWYNN, CAUSED BY THE TRIAL COURT'S INTERRUPTION AND ADJOURNMENT OF THE TRIAL, WAS UNDULY PREJUDICIAL TO THE DEFENDANT'S PRESENTATION OF HIS DEFENSE IN THAT HIS ATTORNEY'S RAPPORT WITH THE JURY IN SUMMATION WAS UNJUSTLY BROKEN AND WHATEVER MOMENTUM DEFENDANT'S ATTORNEY MAY HAVE ACHIEVED IN HIS PRESENTATION WAS UNFAIRLY STALLED.

Under the Sixth Amendment every individual charged with a crime has the right to the assistance of counsel to aid in his defense. In the instant case, appellant was denied his Sixth Amendment right to the assistance of counsel by the trial court's interruption and adjournment of the trial during appellant's attorney's summation to the jury.

The right to assistance by counsel has been interpreted by the Supreme Court of the United States to include a defense counsel's summation to the jury. In fact, the Supreme Court held, in Herring v. New York, 422 U.S. 853, 858 (1975) that:

> There can be no doubt that closing argument for the defense is a basic element of the adversary fact-finding process in a criminal trial. Accordingly, it has universally been held that counsel for the defense has a right to make a closing summation to the jury, no matter how strong the case for the prosecution may appear to the presiding judge (footnote omitted).

The reason behind including summation to the jury as a part of an individual's Sixth Amendment right to the assistance of counsel is very persuasive. Closing argument serves to sharpen and clarify the issues for resolution by the triers of the facts.

Only after all the evidence has been presented can counsel for the defense present his version of the case as a whole, as well as arguing the inferences to be drawn from the testimony and pointing to the weaknesses of the prosecution's position. More importantly, closing argument is the last opportunity to persuade the jury that reasonable doubt of defendant's guilt exists.

> The very premise of our adversary system of criminal justice is that partisan advocacy on both sides of a case will best promote the ultimate objective that the guilty be convicted and the innocent go free. In a criminal trial, which is in the end basically a fact finding process, no aspect of such advocacy could be more important than the opportunity finally to marshal the evidence for each side before submission of the case to judgment.
>
> 422 U.S. at 862.

See also, In Re Winship, 397 U.S. 358 (1970).

As was said in United States v. Commonwealth of Pennsylvania, 273 F.Supp. 923, 924 (E.D.Pa. 1967) "it can hardly be doubted that the absolute right of counsel ... includes the right to have counsel be heard in the summation before verdict."

Such a fundamental right cannot be compromised indirectly, as was accomplished at bar, through the interruption of counsel's summation to the jury and its postponement to the following day. This violation of defendant's right to present a cohesive and continued summation to the triers of the facts cannot be condoned. "Arguments of counsel are an integral part of a jury trial. They are not mere trial trappings which a judge is at liberty to dispense with... ." Commonweath v. Brown, 309 Pa. 515, 521, 164 A. 726, 728 (1933).

While it is true that the Supreme Court of the United States has given trial judges broad discretion in controlling and even restraining closing arguments, such discretion does have its limits. This discretion includes such things as controlling the duration and limiting the scope of closing summation, terminating argument when continuation would be repetitive or redundant, insuring that argument does not stray unduly from the mark, or otherwise impedes the fair and orderly conduct of the trial; it does not include the interruption of counsel's summation, and postponing it until the next day. The trial court, whether deliberately or accidentally, effectively destroyed the continuity of defense counsel's summation to the jury. Part of the effectiveness of a closing statement lies in the establishment of a rapport with the members of the jury, so that the jury can see the evidence in the most favorable light to that advocate's position. This rapport is of a delicate nature, and can easily be broken. Here, the trial court shattered whatever rapport had been established between appellant's counsel and the jury by stopping counsel in the middle of his summation and forcing him to continue the next day. The net effect of this interruption was to completely negate the points which defense counsel hoped to achieve in his summation, as can be seen by the record of the following morning, in which defense counsel's continued summation was feeble at best. Even the trial judge admitted that it was unfair to interrupt defense counsel's summation.

Such interruption clearly prejudiced the defendant and constituted an abuse of judicial discretion. This abuse of discretion

was compounded by the fact that appellant's counsel was the last to give his summation, and that all other parties to the trial had presented their summation intact.

By fragmenting appellant's counsel's summation to the jury, the trial judge effectively reduced its import, thereby violating appellant's right to the assistance of counsel guaranteed by the Sixth Amendment. This clear abuse of discretion by the trial judge impinged on a fundamental constitutional right, and warrants a reversal of the conviction and a remand for a new trial.

POINT IV

UNDER BRADY V. MARYLAND, THE GOVERNMENT WAS OBLIGED TO PROVIDE THE DEFENDANT, GWYNN, WITH EVIDENCE AND POTENTIAL WITNESSES POSSESSED BY OR KNOWN TO THE PROSECUTION AS BEING MATERIAL TO THE ESTABLISHMENT OF THE DEFENDANT'S INNOCENCE.

As the Supreme Court of the United States ruled in Brady v. Maryland, 373 U.S. 83 (1963) the prosecution's suppression of evidence where that evidence is both favorable to the accused and is material to either guilt or to punishment violates the Due Process Clause of the Fourteenth Amendment.

> We now hold that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.
>
> 373 U.S. at 87.

The non-disclosure of such exculpatory evidence is not only prejudicial to a defendant's case, but also violates a fundamental constitutional right. Mr. Justice Powell of the Supreme Court of the United States, in Imbler v. Pachtman, ___ U.S.___,* (1976) classified the deliberate withholding of exculpatory information as both reprehensible and constitutionally prohibited.

More recent cases which reiterate the Brady principle include Moore v. Illinois, 408 U.S. 786 (1972); Giglio v. United States, 405 U.S. 150 (1972); United States v. DeLeo, 422 F.2d 487 (1st Cir. 1970); United States v. Polisi, 416 F.2d 573 (2d Cir. 1969).

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* official citation is unreported. Unofficial citation is 47 L.Ed. 2d 128, 144.

In Moore the Supreme Court outlined the three necessary elements which lie at the heart of the Brady holding. These are:

> (a) suppression by the prosecution after a request by the defense, (b) the evidence's favorable character for the defense, and (c) the materiality of the evidence. 408 U.S. at 794.

As the record indicates, two informants who participated in the gathering of evidence against the appellant were not produced at trial. Also not produced at trial was the tape of one of the conversations between appellant and one of these informants who was wired for sound at the time of their discussions. According to the appellant, he resisted the advances of these informants to sell them illegal narcotic drugs and had they been produced at trial these witnesses would have so testified. Appellant also maintained that the production of the missing tape would have corroberated his statements of innocence.

As can be seen, this evidence, if produced at trial, would have been most favorable to appellant's case and also quite material to his defense against the charges of conspiracy and the substantive violations of the narcotics laws. The prosecution most certainly was aware of the existence and identities of these informants, and the suppression of their testimony at trial, as well as the suppression of the tape recording, violated defendant's right to due process of law under the Fourteenth Amendment, as set forth in Brady.

Consequently, the suppression of potential witnesses and evidence by the prosecution known by it to be both material and favorable to the establishment of appellant's innocence violated the Due Process Clause of the Fourteenth Amendment, mandating a reversal of the conviction and the granting of a new trial.

CONCLUSION

For the above reasons, the conviction of the defendant, JOHN GWYNNE, on counts 1, 10 and 16 in the indictment, to wit, conspiracy to violate 21 U.S.C. sections 812, 841 (a) (1) and 841 (b) (1) (A) [count 1], possession with intent to distribute approximately a quarter of a kilogram of heroin in or about March, 1973, in violation of 21 U.S.C. sections 812, 841 (a) (1) and 841 (b) (1) (A) [count 10], and possession with intent to distribute 148.5 grams of heroin in violation of the same statutes (18 U.S.C. sec. 2) [count 16] should be reversed.

Respectfully submitted,

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James B. Zane,
Dennis M. Gonski,

Of Counsel.

Date

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-v-

JOSEPH MAGNANO, a/k/a "Joe the Grind",
FRANK PALLATTA, a/k/a "Bolot", and a/k/a "Nose",
RICHARD BOLELLA,
LOUIS MACCHIARCLA, a/k/a "Red Hot",
MICHAEL CARBONE,
DOMINIC TUFARO, a/k/a "Donnie Boy",
FRANK FERRARO, a/k/a "Skooch",
CARMINE MARGIASSO, a/k/a "Charlie",
ANTHONY DeLUTRO, a/k/a "Tony West",
ANTHONY SOLDANO, a/k/a "Tony",
JOSEPH MALIZIA, a/k/a "Patsy Pontiac",
ERNEST MALIZIA,
FRANK CARAVELLA,
JOHN GWYNN,
WILLIAM CHAPMAN, a/k/a "Chappy",
ST. JULIAN HARRISON,
FRANK LUCAS,
GERARD CACHOIAN, a/k/a "Coco",
ROBERTO RIVERA, and
GABRIEL RODRIGUEZ, a/k/a "Cass", a/k/a "Cassanova",

Defendants.

U.S. DISTRICT COURT FILED JUL 10 1975 S.D. OF N.Y.

75 CRIM. 683

INDICTMENT

S 75 Cr.

9/22/75 - Cachoian - p.g
9/22/75. Trial begun -
9/30/75 Rivera p.g.
10/24/75. Trial Cmd.

The Grand Jury charges:

From on or about the 1st day of January, 1973 and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York, JOSEPH MAGNANO a/k/a "Joe the Grind", FRANK PALLATTA a/k/a "Bolot", a/k/a "Nose", RICHARD BOLELLA, LOUIS MACCHIAROLA a/k/a "Red Hot", MICHAEL CARBONE, DOMINIC TUFARO a/k/a "Donnie Boy", FRANK FERRARO a/k/a "Skooch", CARMINE MARGIASSO a/k/a "Charlie", ANTHONY DeLUTRO a/k/a "Tony West", ANTHONY SOLDANO a/k/a "Tony", JOSEPH MALIZIA a/k/a "Patsy Pontiac", ERNEST MALIZIA, JOHN GWYNN, WILLIAM CHAPMAN a/k/a "Chappy", ST. JULIAN HARRISON, FRANK LUCAS, GERARD CACHOIAN a/k/a "Coco", ROBERTO RIVERA, and GABRIEL RODRIGUEZ, a/k/a "Cass", a/k/a "Cassanova", the defendants, and Frank Caravella, Alex Pulphus, Joseph Condella, Jose Ramos, Mario Perna, and Anthony Verzino, named herein as co-conspirators but not as defendants, and others to the Grand Jury known and unknown, unlawfully, wilfully and knowingly combined, conspired, confederated and

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DA:ko

agree together and with each other to violate Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

2. It was part of said conspiracy that the said defendants unlawfully, wilfully and knowingly would distribute and possess with intent to distribute Schedule I and II narcotic drug controlled substances the exact amount thereof being to the Grand Jury unknown in violation of Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

OVERT ACTS

In pursuance of the conspiracy and to effect the objects thereof the following overt acts were committed in the Southern District of New York and elsewhere:

1. In or about February 1973 defendant ERNEST MALIZIA met co-conspirator Mario Perna at the Evergreen Bar at 4905 Fifth Ave., Brooklyn, New York and had a conversation.

2. In or about February 1973 defendants ERNEST MALIZIA and FRANK PALLATTA, a/k/a "Bolot", a/k/a "Nose", met in the Bronx, New York and rode in an automobile.

3. In or about March 1973 defendant FRANK PALLATTA, a/k/a "Bolot", a/k/a "Nose", met defendant ERNEST MALIZIA and co-conspirator Mario Perna at the Raceway Diner in Yonkers, New York and discussed narcotics.

4. In or about March 1973 defendant FRANK FERRARO a/k/a "Skooch" delivered a package containing approximately 2 kilograms of heroin to defendant ERNEST MALIZIA and co-conspirator Mario Perna on Allerton Avenue, Bronx, New York.

5. In or about March, 1973 defendant ERNEST MALIZIA and co-conspirator Mario Perna delivered a package containing approximately one-quarter kilogram of heroin to defendant JOHN GWYNN.

6. In or about March, 1973 defendant WILLIAM CHAPMAN a/k/a "Chappy" introduced co-conspirator Mario Perna and defendant ERNEST MALIZIA to defendant ST. JULIAN HARRISON

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7. In or about March, 1973 defendant ERNEST MALIZIA and co-conspirator Mario Perna paid approximately $20,000 to defendants DOMINIC TUFARO a/k/a "Donnie Boy", FRANK PALLADINO a/k/a "Bolot", a/k/a "Nose", and FRANK FERRARO a/k/a "Skooch".

8. In or about March, 1973 co-conspirator Mario Perna and defendant ERNEST MALIZIA received a package containing approximately 4 kilograms of heroin from FRANK FERRARO a/k/a "Skooch".

9. In or about March, 1973 defendant ERNEST MALIZIA and co-conspirator Mario Perna delivered a package containing approximately 3 kilograms of heroin to defendant ST. JULIAN HARRISON.

10. In or about March, 1973 defendant ERNEST MALIZIA and co-conspirator Mario Perna paid defendants JOSEPH MAGNANO a/k/a "Joe the Grind", DOMINIC TUFARO a/k/a "Donnie Boy", FRANK PALLADINO a/k/a "Bolot", a/k/a "Nose", and FRANK FERRARO a/k/a "Skooch" approximately $20,000.

11. In or about April 1973 defendant FRANK LUCAS paid co-conspirator Mario Perna and defendant ERNEST MALIZIA approximately $56,000.

12. In or about April, 1973 defendant ERNEST MALIZIA and co-conspirator Mario Perna delivered a package containing approximately one-eighth kilogram of heroin to defendant GERARD CACHOIAN a/k/a "Coco".

13. In or about September, 1973 co-conspirators Mario Perna and Anthony Verzino and defendant ERNEST MALIZIA met and had a conversation.

14. In or about September, 1973 defendant GERARD CACHOIAN a/k/a "Coco" introduced defendant ROBERTO RIVERA to co-conspirator Mario Perna and defendant ERNEST MALIZIA.

15. In or about September, 1973 co-conspirator Mario Perna delivered a package containing approximately two kilograms of heroin to defendant ROBERTO RIVERA at the Pathmark Shopping Center near Bruckner Boulevard and White Plains Road, Bronx, New York.

16. In or about October, 1973 defendant RICHARD BOLELLA met co-conspirator Mario Perna and had a discussion about reducing the price being paid for the heroin.

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17. In or about November 1973 defendants FRANK FERRARO a/k/a "Skooch" and CARMINE MARGIASSO a/k/a "Charlie" delivered a package containing approximately 12 kilograms of heroin to co-conspirator Mario Perna at the Cross County Shopping Center, Yonkers, New York.

18. In or about November, 1973 defendant ANTHONY DeLUTRO a/k/a "Tony West" delivered a package containing approximately 5 kilograms of heroin to co-conspirator Anthony Verzino.

19. On or about December 1st, 1973 co-conspirator Mario Perna and defendant ERNEST MALIZIA delivered a package containing approximately 10 kilograms of heroin to defendant FRANK LUCAS at the Van Cortlandt Motel, Bronx, New York.

20. In or about November, 1973 co-conspirator Anthony Verzino paid defendant ANTHONY DeLUTRO a/k/a "Tony West" approximately $250,000 in two installments.

21. In or about January 1974 defendant ANTHONY SOLDANO a/k/a "Tony", delivered a package containing approximately 3 kilograms of heroin to co-conspirator Anthony Verzino in Queens, New York.

22. On or about January 15, 1974, defendant JOHN GWYNN distributed approximately 148.5 grams of heroin in or near Apartment 5C, 1065 Jerome Avenue, Bronx, New York.

23. On or about February 25, 1974 co-conspirators Frank Caravella and Anthony Verzino possessed approximately 26 pounds of heroin at 1130 Pelham Parkway, Bronx, New York.

24. On or about January 28, 1975, the defendant FRANK LUCAS possessed approximately $584,705 in cash at 933 Sheffield Road, Teaneck, New Jersey.

(Title 21 United States Code, Section 846.)

SECOND COUNT

The Grand Jury further charges:

In or about March 1973 in the Southern District of New York, JOSEPH MAGNANO a/k/a "Joe the Grind", FRANK PALLATTA, a/k/a "Bolot", a/k/a "Nose", RICHARD BOLELLA, LOUIS MACCHIAROLA a/k/a "Red Hot", MICHAEL CARBONE, DOMINIC TUFARO a/k/a "Donnie Boy", FRANK FERRARO a/k/a "Skooch", and CARMINE MARGIASSO a/k/a "Charlie" the defendants, unlawfully, wilfully and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately 2 kilograms of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A) and Title 18, United States Code, Section 2.)

THIRD COUNT

The Grand Jury further charges:

In or about March, 1973 in the Southern District of New York, JOSEPH MAGNANO a/k/a "Joe the Grind", FRANK PALLATTA, a/k/a "Bolot", a/k/a "Nose", RICHARD BOLLELA, LOUIS MACCHIAROLA a/k/a "Red Hot", MICHAEL CARBONE, DOMINIC TUFARO a/k/a "Donnie Boy" FRANK FERRARO a/k/a "Skooch" and CARMINE MARGIASSO a/k/a "Charlie" the defendants, unlawfully, wilfully and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately 4 kilograms of heroin.

(Title 21, United States Code, Sections 812 841(a)(1) and 841(b)(1)(A) and Title 18, United States Code, Section 2.)

FOURTH COUNT

The Grand Jury further charges:

In or about November, 1973 in the Southern District of New York, JOSEPH MAGNANO a/k/a "Joe the Grind", FRANK PALLATTA, a/k/a "Bolot", a/k/a "[illegible]", RICHARD BOLELLA, LOUIS MACCHIAROLA a/k/a "Red Hot", MICHAEL CARBONE, DOMINIC TUFARO a/k/a "Donnie Boy", FRANK FERRARO a/k/a "Skooch" and CARMINE MARGIASSO a/k/a "Charlie" the defendants, unlawfully, wilfully and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately 12 kilograms of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A), and Title 18, United States Code, Section 2.)

FIFTH COUNT

The Grand Jury further charges:

In or about March, 1973 in the Southern District of New York, ST. JULIAN HARRISON and FRANK LUCAS the defendants, unlawfully, wilfully and knowingly did possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately 3 kilograms of heroin.

(Title 21, United States Code, Sections 812 841(a)(1) and 841(b)(1)(A) and Title 18, United States Code, Section 2.)

SIXTH COUNT

The Grand Jury further charges:

In or about October, 1973 in the Southern District of New York, FRANK LUCAS the defendant, unlawfully, wilfully and knowingly did possess with intent to distribute Schedule I and II narcotic drug controlled substances, to wit, approximately 4 kilograms of heroin and 2 kilograms of cocaine.

(Title 21, United States Code, Sections 812 841(a)(1) and 841(b)(1)(A)

SEVENTH COUNT

The Grand Jury further charges:

On or about the 1st day of December, 1973 in the Southern District of New York, FRANK LUCAS the defendant, unlawfully, wilfully and knowingly did possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately 10 kilograms of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).

EIGHTH COUNT

The Grand Jury further charges:

In or about November, 1973 in the Southern District of New York, ANTHONY DeLUTRO a/k/a "Tony West", the defendant, unlawfully, wilfully and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately 5 kilograms of heroin

(Title 21, United States Code, Sections 812 841(a)(1) and 841(b)(1)(A).)

NINTH COUNT

The Grand Jury further charges:

In or about January, 1974 in the Southern District of New York, defendants ANTHONY SOLDANO a/k/a "Tony", and JOSEPH MALIZIA a/k/a "Patsy Pontiac" the defendants, unlawfully, wilfully and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately 3 kilograms of heroin.

(Title 21, United States Code, Sections 812 841(a)(1) and 841(b)(1)(A) Title 18, United States Code, Section 2.)

TENTH COUNT

The Grand Jury further charges:

In or about March, 1973 in the Southern District of New York, JOHNNY GWYNN the defendant, unlawfully, wilfully and knowingly did possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately one-quarter kilogram of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

ELEVENTH COUNT

The Grand Jury further charges:

In or about April, 1973 in the Southern District of New York, GERARD CACHOIAN a/k/a "Coco" the defendant, unlawfully, wilfully and knowingly did possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately one-eighth kilogram of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

DA:ko

TWELFTH COUNT

The Grand Jury further charges:

In or about September, 1973 in the Southern District of New York, ROBERTO RIVERA the defendant, unlawfully, wilfully and knowingly did possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately two kilograms of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

THIRTEENTH COUNT

The Grand Jury further charges:

In or about December 1973 in the Southern District of New York FRANK CARAVELLA the defendant, unlawfully, wilfully and knowingly did possess with intent to distribute a Schedule I narcotic drug controlled substance to wit, approximately one-half kilogram of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

FOURTEENTH COUNT

The Grand Jury further charges:

On or about October 30, 1973, in the Southern District of New York, the defendant, JOHN GWYNN, unlawfully, wilfully and knowingly did distribute and possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, 159.5 grams of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A); Title 18 United States Code, Section 2.)

The Grand Jury further charges:

On or about the 20th day of December, 1973, in the Southern District of New York JOHN GWYNN, the defendant, unlawfully, wilfully and knowingly did distribute and possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, 151.5 grams of cocaine.

(Title 21, United States Code, Sections 812 841(a)(1) and 841(b)(1)(A); Title 18, United States Code, Section 2.)

SIXTEENTH COUNT

The Grand Jury further charges:

On or about the 15th day of January, 1974 in the Southern District of New York, JOHN GWYNN, the defendant, unlawfully, wilfully and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, 148.5 grams of heroin.

(Title 21, United States Code, Section 812 841(a)(1) and 841(b)(1)(A); Title 18, United States Code, Section 2.)

SEVENTEENTH COUNT

The Grand Jury further charges:

In or about March 1971, in the Southern District of New York, GABRIEL RODRIGUEZ, a/k/a "Cass", a/k/a "Casanova", the defendant, unlawfully, wilfully and knowingly did possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately 1/8 kilogram of heroin.

(Title 21, United States Code, Sections 812 841(a)(1) and 841(b)(1)(A).

W. M. Dove
Foreman

Paul J. Curran
PAUL J. CURRAN
United States Attorney

12-11-75

12-12-75

JUDGE COOPER

75 CRIM. 687

U. S. C. Form No. 100

CRIMINAL DOCKET

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U.S.:
vs.	Dominic F. Amorosa, AUSA
1. JOSEPH MAGNANO, a/k/a "Joe the Grind" 1-4	791-1960
2. FRANK PALLATTA, a/k/a "Bolot", and a/k/a "Rose", 1-4	
3. RICHARD BOLELLA, 1-4	
4. LOUIS MACCHIAROLA, a/k/a "Red Hot", 1-4	
5. MICHAEL CARBONE, 1-4	
6. DOMINIC TUFARO, a/k/a "Donnie Boy", 1-4	For Defendant: Stokamer & Epstein
7. FRANK FERRARO, a/k/a "Skooch", 1-4	100 Church Street, NYC 10007
8. CARMINE MARGIASSO, a/k/a "Charlie", 1-4	962 1564 (Richard Bolella)
9. ANTHONY DeLUTRO, a/k/a "Tony West", 1-8	
10. ANTHONY SOLDANO, a/k/a "Tony", 1-9	
11. JOSEPH MALIZIA, a/k/a "Patsy Pontiac", 10	
12. ERNEST MALIZIA, 1	
13. FRANK CARAVELLA, 13	
14. JOHN GWYNN, 1, 10, 14, 15, 16	
15. WILLIAM CHAPMAN, a/k/a "Chappy", 1	
16. ST. JULIAN HARRISON, 1-5	
17. FRANK LUCAS, 1, 5-7	
18. GERARD CACHOLAN, a/k/a "Coco", 1-11	
19. ROBERTO RIVERA, and 1-12	
20. GABRIEL RODRIGUEZ, a/k/a "Cass", a/k/a "Cassanova", 1-17	

CR RECEIVED AND DISBURSED

NAME	RECEIVED	DISBURSED

(07)
Fine,
Clerk,
Marsh
Attorney,

21 USC 846, 841, 812, (a)(1)(b)

Consp. to viol. Fed. Narco. Laws (Ct. 1)

Distr. & possess. w/intent to distr.

Heroin, I, & Cocaine, II, (Cts. 2-17)

(Seventeen Counts)

DATE	PROCEEDINGS
7-10-75	Filed indictment.
7-15-75	Deft. Magano (atty present Edward Panzer) enters plea of not guilty. Bail continued.
	Deft. Pallatta (atty present Jay Goldberg) enters plea of not guilty. Bail continued.
	Deft. Bolella (atty present, Gilbert Epstein) enters plea of not guilty Bail continued.
	Deft. DeLutro (atty present) Enters plea of not guilty. Bail comntinued.
	Deft. Soldano (atty present) Robert Blasnet Enters plea of not guilty. Bail continued.
	Deft. Gwynn (atty present Edward D. Loughman enters plea of not guilty. Bail continued
	Deft. Chapman (atty present, Reed) Enters plea of not guilty Bail continued.
	Deft. Cacholan(atty not present) Court enters plea of not guilty. Bail continued.
	Deft. Rivera Produced on Writ (atty not present) Court enters not guilty plea
	(continued on next pg)

DATE	PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT
	Deft. Rodriguez Bench warrant ordered issued Trial scheduled Sept 22, 1975 at 1;00 P.M. .....Cooper, J.		
7-15-75	FRANK LUCAS-Filed Govt's. affidavit for a writ of habeas corpus directed to Warden, Trenton State Prison, Trenton, N.J. Writ issued, ret. 7-28-75.		
7-24-75	Filed Govt's. affidavit & notice of motion for an order sequestering jurors during the trial of this matter.		
7-28-75	Deft. Lucas (atty present) Jeffrey C. Hoffman. Pleads not guilty. Case referred to Judge Cooper. Writ satisfied.....Conner,J.		
7-30-75	ANTHONY DeLUTRO-Filed Second Offender Information.		
7-30-75	WILLIAM CHAPMAN-Filed Second Offender Information.		
7-30-75	ROBERTO RIVERA-Filed Second Offender Information.		
7-30-75	ROBERTO RIVERA-Filed Second Offender Information.		
7-30-75	FRANK LUCAS-Filed Second Offender Information.		
7-31-75	Filed MEMO ENDORSED on Govt's. motion filed 7-24-75. Application for sequestration is denied without prejudice to renewal.....Cooper,J. (mailed notice)		
7-25-75	ROBERTO RIVERA-Filed ORDER that the U.S. Marshal for the S.D.N.Y. maintain custody of the deft. in the Southern District pending the completion of the trial of this indictment.....Cooper,J.		
8-1-75	GERARD CACHOIAN-Filed Second Offender Information.		
8-1-75	FRANK LUCAS-Filed OPINION #42898 - Deft's. motion for suppression of evidence is denied.....Cooper,J. (mailed notice)		
8-13-75	FRANK LUCAS-Filed writ of habeas corpus directed to Warden, Trenton State Prison, with marshal's return. Writ satisfied 7-28-75.....Conner,J.		

DATE	PROCEEDINGS	Date Ord. Judgment
8-19-75	ANTHONY SOLDANO-Filed deft's. affidavit & notice of motion for a bill of particulars, discovery & inspection, disclosure & for suppression of evidence, ret. 8-29-75.	
8-25-75	ANTHONY SOLDANO-Filed Govt's. affidavit in opposition to deft's. motion for a bill of particulars & discovery.	
8-21-7.	Filed OPINION #42987-Defts'. motions for discovery and for a bill of particulars are granted in part & denied in part. The motions of defts. Magnano and Palatta to strike aliases are denied. Defts'. Magnano, DeLutro & Palatta's motions for severence are denied. Defts'. Lucas, Bolella & Palatta motion for disclosure of agent or informer is denied. Deft. Soldano's. motion to dismiss the indictment is denied.....Cooper,J. (mailed notice)	
9-3-75	FRANK LUCAS-Filed Govt's. affidavit for a writ of habeas corpus directed to Warden, Trenton State Prison. Writ issued, ret. 9-19-75.	
9-3-75	ANTHONY SOLDANO-Filed MEMO ENDORSED on deft's. motion for a bill of particulars, discovery & suppression. Motion granted in part & denied in part.....Cooper,J. (mailed notice)	
9-10-75	Filed Govt's. affidavit for a writ of habeas corpus ad test. for John Vasquez directed to Superintendent, N.Y.S. Dept. of Corrections. Writ Issued, ret. forthwith.	
9-16-75	ANTHONY DeLUTRO-Filed deft's. memorandum of law. (Filed in 75 Cr. 24).	
9-16-75	ANTHONY DeLUTRO-Filed deft's. requests to charge. (Filed in 75 Cr. 24).	
9-18-75	RICHARD BOLELLA-Filed deft's. affirmation & notice of motion for discovery and for a continuance, ret. 9-22-75.	
9-24-75	WILLIAM CHAPMAN-Filed CJA Form 23 - deft's. financial affidavit.	
9-23-75	WILLIAM CHAPMAN-Filed ORDER appointing William Chance, 70 Lafayette St., N.Y.C. 10013 as attorney for deft. in this matter only.....Cooper,J.	
9-30-75	RICHARD BOLELLA-Filed Govt's. affidavit in opposition to deft's. motion for discovery and for a continuance.	
10-1-75	ANTHONY DeLUTRO-Filed ORDER granting custody to the Govt. of sealed Court authorized intercepted wire communications not to be unsealed in the absence of further order of this Court.....Cooper,J.	
10-2-75	RICHARD BOLELLA-Filed MEMO ENDORSED On deft's. motion for discovery filed 9-18-75. The within application has been rendered in its entirety by the Govt's. disclosure in open court on 9-29-75.....Cooper,J.	
0-3-75	Filed Govt's. affidavit & ORDER that John Vasquez be lodged at the Bergen County Jail and transported to and from U.S. Attorney's Office, S.D.N.Y. during the period from 10-3-75 to 10-30-75.....Duffy,J.	
0-3-75	Filed Govt's. affidavit & ORDER that Anthony Manfredonia be lodged at the Bergen County Jail and transported to and from U.S. Attorney's Office, S.D.N.Y. during the period from 10-2-75 to 10-30-75.....Duffy,J.	

DATE	PROCEEDINGS	Date Or Judgment
9-22-75	Deft. Gerard Cacboian withdraws his plea of not guilty & pleads guilty to count 11 only. Govt. consents to dismiss count 1. Pre-sentence report ordered. Probation notified. Sentence - Date Open. Present bail condition continued. .....Cooper,J.	
9-22-75	Jury trial begun as to the following defts. Joseph Magnano, Frank Pallatta, Richard Bolella, Anthony DeLutro, Anthony Saldano, John Gwynn, William Chapman Roberto Rivera & Frank Lucas before Cooper,J. (Oath to jurors, voire dire).	
9-24-75	Trial continued. Jury duly empaneled & Sworn.	
9-25-75	Trial continued. Deft. Roberto Rivera withdraws his plea of not guilty (during trial) & pleads guilty to count 1 only. (Count 12 open). Pre-sentence report ordered. Probation notified. (Sentence date open). Deft. remanded in custody of U.S. Marshals.....Cooper,J.	
9-26-75	Trial continued.	
9-29-75	Trial continued.	
9-30-75	Trial continued. Deft. Lucas bail exonerated & deft. remanded.	
10-1-75	Trial continued.	
10-2-75	Trial continued.	
10-3-75	Trial continued.	
10-6-75	Trial continued. Deft. William Chapman moves to exonerate bail. Motion Granted. No opposition by the Govt.	
10-7-75	ROBERTO RIVERA-Filed deft's. petition to enter plea of guilty with Order - guilty plea accepted.....Cooper,J.	
10-7-75	Trial continued.	
10-8-75	Trial continued.	
10-9-75	Trial continued.	
0-10-75	Trial continued.	
0-14-75	Trial continued.	
0-15-75	Trial continued. Govt. rests.	
0-16-75	Trial continued.	
0-17-75	Trial continued.	
0-20-75	Trial continued.	
0-21-75	Trial continued. All defts. rest.	
0-22-75	Trial continued.	
0-23-75	Trial continued.	
0-24-75	Trial continued & concluded. (Special verdict as to all deft's. attached.) Jury Verdict - Deft. Joseph Magnano guilty on counts 1,2,3 & 4. (jury polled) Pre-sentence report ordered. Probation notified. Sentence 12-3-75 at 10:00 A.M. Deft. Remanded.....Cooper,J. Deft. Frank Pallatta guilty on counts 1,2,3 & 4 (jury polled). Pre-sentence report ordered. Probation notified. Sentence 12-3-75 at 10:00 A.M. Deft. Remanded.....Cooper,J. Deft. Bolella guilty on counts 1 & 4 and jury disagreement on counts 2 & 3. (jury polled). Pre-sentence report ordered. Probation notified. Sentence 12-3-75 at 10:00 A.M. Deft. Remanded.....Cooper,J. Deft. Anthony DeLutro guilty on counts 1 & 8 (jury polled). Pre-sentence report ordered. Probation notified. Sentence 12-3-75 at 10:00 A.M. Deft. Remanded.....Cooper,J. Deft. Anthony Soldano guilty on counts 1 & 9 (jury polled) Pre-sentence report ordered. Probation notified. Deft. Remanded. Sentence 12-3-75 at 10:00 A.M.....Cooper,J. Cont'd. on Page #5	

DATE	PROCEEDINGS
10-24-75	Jury Verdict - Deft. John Gwynn guilty on counts 1,10 & 16. Jury disagreement on counts 14 & 15. Pre-sentence report ordered. Probation notified. Sentence 12-3-75 at 10:00 A.M. Deft. remanded. .....Cooper,J.
	Deft. William Chapman jury disagreement on count 1 (R.O.R. .....Cooper,J.
	Deft. Frank Lucas guilty on counts 1,5,6 & 7 (jury polled). Pre-sentence report ordered, Probation notified. Sentence 12-3-75 at 10:00 A.M. Deft. Remanded,.....Cooper,J.
11-12-75	JOSEPH MAGNANO, et al., - Filed Order that Mr. John Bright & Ms. Sonja Johnson be allowed entrance into the Metropolitan Correctional Center during visiting hours from 12:00 noon to 3:30 p.m. & 4:30 p.m. to 6:30 p.m. for the purpose of consulting with the defts. Joseph Magnano,Frank Balatta & Richard Bolella. Cooper J. (Consented by U.S.Atty.) (mailed notice)
11-20-75	Filed transcript of record of proceedings dated 9-22-75.
11-25-75	RICHARD BOLLELLA, FRANK PALATTA & JOSEPH MAGNANO-Filed defts'. affidavit & notice of motion for an evidentiary hearing to determine if a new trial should be granted and for a judgment of acquittal on counts 2 & 3 as to deft. Bolella, ret. 12-3-75.
11-26-75	ANTHONY DeLUTRO-Filed deft's. affidavit & notice of motion for a new trial and for a judgment of acquittal, ret. 12-3-75.
12-3-75	JOHN GWYNN-Filed deft's. motion for a judgment of acquittal or alternatively for a new trial.
12-3-75	JOHN GWYNN-Filed MEMO ENDORSED on deft's. motion filed 12-3-75. Motion denied in all respects.....Cooper,J. (mailed notice)
12-3-75	Filed Govt's. affidavit in opposition to defts'. post trial motions for a new trial.
12-3-75	ANTHONY DeLUTRO-Filed MEMO ENDORSED on deft's. motion for a new trial and for a judgment of acquittal, filed 11-26-75. Motion denied in all respects...Cooper,J. (mailed notice)
12-3-75	RICHARD BOLLELLA, FRANK PALATTA & JOSEPH MAGNANO-Filed MEMO ENDORSED on defts'. motion for an evidentiary hearing & for a judgment of acquittal, filed 11-25-75. Motion denied in all respects.....Cooper,J. (mailed notice)
12-5-75	RICHARD BOLELLA-Filed true copy of U.S.C.A. Mandate - Deft's. motion dated 10-28-75 for bail pending sentencing is denied. (mailed notice)
12-9-75	ROBERTO RIVERA-Filed Govt's. sentencing memorandum.
12-3-75	RICHARD BOLELLA-Filed JUDGMENT & COMMITMENT (atty present) The deft. is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of TEN (10) YEARS on each of counts 1 and 4 to run CONSECUTIVELY to each other. The deft. is placed on SPECIAL PAROLE for a period of THREE (3) YEARS pursuant to Title 21, U.S. Code, Section 841 to commence upon expiration of confinement.....Cooper,J. Issued commitment 12-9-75.

DATE	PROCEEDINGS	Date Order or Judgment
12-3-75	ANTHONY SOLDANO-Filed JUDGMENT & COMMITMENT (atty present) The deft. is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of FIFTEEN (15) YEARS on each of Counts 1 and 9 to run concurrently with each other. The deft. is placed on SPECIAL PAROLE for a period of THREE (3) YEARS, pursuant to Title 21, U.S. Code, Section 841, to commence upon expiration of confinement.....Cooper,J. Issued commitment 12-9-75.	
2-3-75	JOSEPH MAGNANO-Filed JUDGMENT & COMMITMENT (atty present) The deft. is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of FIFTEEN (15) YEARS on Count 1. FIFTEEN (15) YEARS on Count 2 to run CONSECUTIVELY to sentence imposed on Count 1. FIFTEEN (15) YEARS on Count 3 to run concurrently with sentence on Counts 1 and 2. FIFTEEN (15) YEARS con Count 4 to run concurrently with sentence on Counts 1 and 2. The deft. is placed on SPECIAL PAROLE for a period of THREE (3) YEARS to commence upon expiration of confinement, pursuant to (Title 21 Section 841, U.S. Code.)...Cooper,J. Issued commitment 12-10-75.	
12-3-75	FRANK PALLATTA-Filed JUDGMENT & COMMITMENT (atty present) The deft. is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of FIFTEEN (15) YEARS on Count 1. FIFTEEN (15) YEARS on Count 2 to run CONSECUTIVELY to sentence imposed on Count 1. FIFTEEN (15) YEARS on Count 3 to run concurrently with sentence on Counts 1 and 2. FIFTEEN (15) YEARS on Count 4 to run concurrently with sentence on Counts 1 and 2. The deft. is placed on SPECIAL PAROLE for a period of THREE (3) YEARS to commence upon expiration of confinement, pursuant to (Title 21 Section 841, U.S.Code)....Cooper,J. Issued commitment 12-10-75	
12-3-75	JOHN GWYNN-Filed JUDGMENT & COMMITMENT (atty present) The deft. is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of EIGHT (8) YEARS on each of counts 1,10 and 16 to run concurrently with each other. Deft. placed on SPECIAL PAROLE for a period of THREE (3) YEARS, pursuant to Title 21, U.S.Code, Section 841, to commence upon expiration of confinement. The sentence imposed herein is to run concurrently with the state probation violation.....Cooper,J. Issued commitment 12-10-75.	
12-3-75	ANTHONY DeLUTRO-Filed JUDGMENT & COMMITMENT (atty present) The deft. is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of TWENTY-FIVE (25) YEARS on each of Counts 1 and 8 to run concurrently with each other. The deft. is placed on SPECIAL PAROLE for a period of SIX (6) YEARS, pursuant to Title 21, U.S. Code, Section 841, to commence upon expiration of confinement.....Cooper,J. Issued commitment 12-10-75.	
2-10-75	ANTHONY DeLUTRO-Filed deft's. affidavit & notice of motion for reduction of sentence.	
12-10-75	ANTHONY DeLUTRO-Filed deft's. notice of appeal from the judgment of conviction entered on 12-3-75. (Mailed copies to Anthony DeLutro, M.C.C., 150 Park Row, N.Y.C. 10007 and U.S. Attorney's Office).	
2-12-75	ANTHONY SOLDANO-Filed deft's. notice of appeal from the judgment of conviction entered on 12-3-75. Mailed copies to Anthony Soldano, 150 Park Row, N.Y.C.10007 and U.S. Attorney's Office.	

75 Cr. 637

75 Cr. 637

D. C. 110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS	Date Ord Judgment
12-12-75	RICHARD BOLELLA, FRANK PALATTA & JOSEPH MAGNANO-Filed Defts'. notice of appeal from the judgments of conviction entered on 12-3-75. Mailed copies to Defts. at 150 Park Row, N.Y.C. 10007 and U.S. Attorney's Office.	
12-15-75	ANTHONY DeLUTRO-Filed Govt's. affidavit in opposition to deft's. motion for reduction of sentence.	
12-16-75	JOHN GWYNN-Filed deft's. notice of appeal from the judgment of conviction entered on 12-3-75. Copies mailed to John Gwynn, 150 Park Row, N.Y.C. 10007 and U.S. Attorney's Office.	
12-19-75	ANTHONY SOLDANO-Filed commitment & entered return. Deft. delivered to Warden, M.C.C., N.Y.C. on 12-3-75.	
12-19-75	RICHARD BOLELLA-Filed commitment & entered return. Deft. delivered to Warden, M.C.C., N.Y.C. on 12-3-75.	
12-19-75	JOHN GWYNN-Filed commitment & entered return. Deft. delivered to Warden, M.C.C., N.Y.C. on 12-3-75.	
12-19-75	ANTHONY DeLUTRO-Filed commitment & entered return. Deft. delivered to Warden, M.C.C., N.Y.C. on 12-3-75.	
12-19-75	FRANK PALLATTA-Filed commitment & entered return. Deft. delivered to Warden, M.C.C., N.Y.C. on 12-3-75.	
12-19-75	JOSEPH MAGNANO-Filed commitment & entered return. Deft. delivered to Warden, M.C.C., N.Y.C. on 12-3-75.	
12-29-75	RICHARD BOLLELLA-Filed Deft's. affidavit & notice of motion for bail pending appeal.	
12-29-75	JOSEPH MAGNANO & FRANK PALATTA-Filed Defts'. affidavit & notice of motion for bail pending appeal.	
-1-07-76	JOSEPH MAGNANO, FRANK PALATTA, RICHARD BOLELLA & ANTHONY DE LUTRO: Filed Order that deft's . motion for a new trial based on newly discovered evidence is denied.... Cooper,J.(mailed notice)	

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk
By [signature] Deputy Clerk

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